

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
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NORTHERN DIVISION

JEFFERY J. JACKSON, 16703  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA  
PETITIONER,

V.

2:05-CV-1164-MEF

D.T. MARSHALL-SHERIFF, et al.,  
RESPONDENTS.

OBJECTIONS TO THE RECOMMENDATION OF  
MAGISTRATE JUDGE

COME NOW THE PETITIONER, JEFFERY J. JACKSON PROSE IN  
RESPONSE TO THIS HONORABLE COURT'S ORDER TO FILE OBJECTIONS  
TO THE RECOMMENDATION MADE MAY 10, 2006.

THE PETITIONER, A STATE PRETRIAL DETAINEE, IS ENTITLED TO  
RAISE CONSTITUTIONAL CLAIMS IN A FEDERAL HABEAS PROCEEDING  
UNDER § 2241 IF TWO REQUIREMENTS ARE SATISFIED.  
FIRST, THE PETITIONER MUST BE IN CUSTODY. SEE 28 U.S.C.  
§ 2241 (c); DICKERSON, 816 F.2d at 224.

PETITIONER IS IN CUSTODY AT THE MONTGOMERY CO. DETENTION  
FACILITY.  
SECOND, PETITIONER MUST HAVE EXHAUSTED AVAILABLE  
STATE REMEDIES.

PETITIONER CURRENTLY DO NOT HAVE AVAILABLE AN ADEQUATE  
PROCEDURE. BRADEN V. 30<sup>TH</sup> JUDICIAL CIRCUIT. CT OF KY., 405  
484, 489 (1973). PG. (1.)

ON APRIL 12, 2006, PETITIONER WAS INFORMED BY COUNTY OFFICIALS THAT HE WAS INDICTED FOR MURDER AND NOT FIRST DEGREE ROBBERY IN WHICH THE ARREST WAS BASED ON.

PETITIONER RECEIVED NOTICE FROM THE CIRCUIT COURT THROUGH HAND MAIL BY A COUNTY JAIL OFFICER INFORMING HIM THAT PRE-TRIAL STATUS CONFERENCE SET MAY 10, 2006, AT 9:00 AM AND TRIAL SET MAY 15, 2006, AT 9:00 A.M., IN COURTROOM 4B, 4TH FLOOR, MONTGOMERY CO. COURTHOUSE, MONTGOMERY, AL.

TRINA WILLIAMS, APPOINTED BY JUDGE: EUGENE REESE FOR DEFENDANT

PETITIONER CAN NOT PRESENT HIS CLAIMS TO THE CIRCUIT COURT BECAUSE OF A CLEAR DENIAL OF HIS RIGHT TO BE PRESENT. PETITIONER HAD NOT BEEN ARRAIGNED FOR ROBBERY FIRST DEGREE OR INTENTIONAL MURDER.

PURSUANT TO RULE 14.2 (-) ARRAIGNMENT IS MANDATORY PROCEDURE IN WHICH THE COURT MUST COMPLY WITH.

ON MAY 10TH 2006, PETITIONER WAS TAKEN TO A PRETRIAL STATUS CONFERENCE IN WHICH HE DID NOT APPEAR IN COURT. PETITIONER ALSO, DID NOT RECEIVE ASSISTANCE FROM HIS COURT APPOINTED ATTORNEY ON MAY 10TH 2006.

CERTAIN STEPS ARE MANDATORY AT ARRESTMENT, NOTICE OF CHARGES (AS REQUIRED BY ART. 1, § 6, ALA. CONSTITUTION OF 1901), AND RECEIVE COUNSEL AT EVERY STAGE OF THE TRIAL.

RULE 9.1 A.R. CRIM.P IS BASED ON RULE 43, FED.R. CRIM.P., AND RULE 713 UNIF. R. CRIM. P.



RULE 9.1 SET FORTH THE RIGHT OF THE DEFENDANT TO BE PRESENT AT EVERY STAGE OF THE TRIAL.

DEFENDANT CURRENTLY WILL NOT RECIEVED A TRIAL BY JURY BECAUSE ARRANGEMENT IS A MANDATORY PROCEDURE IN WHICH THE COURT DID NOT COMPLY WITH.

PURSUANT TO RULE 14.1(4) A.R.C.M.R., NO DEFENDANT SHALL BE TRIED FOR THE COMMISSION OF ANY FELONY OFFENSE UNTIL HE HAS BEEN ARRIGNED IN OPEN COURT.

IN ORDER TO EXHAUST STATE REMEDIES, A PETITIONER MUST FAIRLY APPRISE THE HIGHEST STATE COURT OF THE FEDERAL RIGHTS THAT WERE ALLEGEDLY VIOLATED. SEE O'SULLIVAN V. BOERCKEL, 526 U.S. 828. (845 91999); RICHARDSON V. PROCTOR, 762 F.2d 429, 432 (5<sup>TH</sup> CIR. 1985).

EXCEPTIONS EXIT TO THE EXHAUSTION REQUIREMENT WHEN "THERE IS ABSENCE OF AVAILABLE STATE CORRECTIVE PROCESS OR THE EXISTENCE OF CIRCUMSTANCES RENDERING SUCH PROCESS INEFFECTIVE TO PROTECT THE RIGHT OF THE PRISONER." HOWARD V. DAVIS, 815 F.2d 1429, 1430 (11<sup>TH</sup> CIRCUIT 1987); 28 U.S.C. § 2254 (b).

EXCEPTIONAL CIRCUMSTANCES EXIST BECAUSE, AVAILABLE STATE COURT REMEDIES HAS BEEN DENIED TO THE PETITIONER BY THE CIRCUIT COURT WITH JURISDICTION TO REVIEW HIS FEDERAL CLAIMS. A PRETRIAL DETAINEE MAY ANNUCATE THE MERITS OF HIS CLAIMS BEFORE A JUDGEMENT OF CONVICTION IF EXCEPTIONAL CIRCUMSTANCE EXIST.

CIRCUMSTANCES EXIST THAT WARRANT FEDERAL COURT INTERFERENCE IN THIS MATTER PURSUANT TO 28 U.S.C. § 2241 (2); DICKERSON, 816 F.2d at 224.

PETITIONER IS NOT IN CUSTODY PURSUANT TO ARREST OF INTENTIONAL MURDER AND FIRST DEGREE ROBBERY.

PETITIONER RECEIVED NOTICE FROM THE CIRCUIT COURT OF MONTGOMERY THAT HE IS TO BE TRIED ON MAY 5, 2006 FOR MURDER, 13A-6-2 CODE OF ALABAMA. (1975)

ROBBERY FIRST DEGREE AND INTENTIONAL MURDER IS A FABRICATED COMPLAINT, MADE BY LAW ENFORCEMENT OFFICERS. PETITIONER HAVE BEEN INCARCERATED (2) YEAR 3 MONTHS WITHOUT TRIAL BY JURY IN THE CHARGES OF FIRST DEGREE ROBBERY AND INTENTIONAL MURDER.

IT IS THE RECOMMENDATION OF THE MAGISTRATE JUDGE THAT THE PETITION FOR HABEAS CORPUS RELIEF BE DISMISSED WITHOUT PREJUDICE TO AFFORD PETITIONER AN OPPORTUNITY TO EXHAUST ALL AVAILABLE STATE COURT REMEDIES.

THE COURT CONCLUDES THAT THE INSTANT HABEAS CORPUS ACTION SHOULD BE DISMISSED BECAUSE PETITIONER FAILED TO EXHAUST STATE REMEDIES WITH RESPECT TO WHICH IF THE CLAIMS RAISED THEREIN.

PETITIONER OBJECT TO THE FINDING OF THE MAGISTRATE JUDGE FOR THE REASON STATED ABOVE. PETITIONER REQUESTED TO FEDERAL REVIEW PURSUANT TO U.S.C. § 2241.

## CONCLUSION

WHEREAS PETITIONER HAVE SHOWN THAT HE IS ENTITLED TO RELIEF, THE CLAIMS RAISED IN THE PETITION SHOULD BE REVIEWED AND THEN RELIEF GRANTED TO THE PETITIONER.

DONE THIS 14<sup>TH</sup> DAY OF MAY  
2006.

Jeffery J. Jackson

PRO, SE - PETITIONER

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON THIS (14) DAY OF MAY, 2006, I SERVED A COPY OF THE FOREGOING ON THE RESPONDENTS, BY PLACING THE SAME IN THE UNITED STATES MAIL, LOCATED AT THE MONTGOMERY CC DET. FACILITY, ALSTAGE PRISON, AND ADDRESSED AS FOLLOWS:

OFFICE OF THE ATTORNEY GENERAL  
ALA. STATE HOUSE  
11 SOUTH UNION ST.  
MONTGOMERY, AL. 36130-0152

HASKELL SLAUGHTER YOUNG & GALLION, LLC  
P.O. BOX 4660  
MONTGOMERY, AL. 36103-4660  
ATTORNEY FOR RESPONDENT  
D.T. MARSHALL - SHERIFF

Jeffery J. Jackson -  
PRO SE - PETITIONER